Checked & Verified, 2013

CA 1760/96

(2)

CF0000060630

/- APPEAL OF PRISONER -/

No. 369 Name माड़वी लखमा

Father's Name हिड़मा Residence ग्राम -मारडुम थोरीपारा थाना-कुवाकोंडा बस्तर

Age 32 Sentenced to आजीवन कारावास on

7. 3. 96 under Section 302 I.P.C. by III A.S.J. Jagdalpur

S.T.No. 295/93

Division Bench (Criminal)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.
2. Date of which copy received :- 7. 3. 96
3. Date on which Appelisent :- 21. 3. 96
4. Whether the prisoner wished to be represented or not Yes/No.

No. 369 Name माड़वी लखमा पिता हिड़मा

Continued in जिला Jail जगदलपुर बस्तर

No. 256 /octagon/96 Dated 21/3/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur, together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./Sub Jail.

Date of receipt in C.J.M's Office. 23/3/96

Date of receipt of record of accompany. ∝

Memo of Appeal of the Appelliate Court. ✗

No. 1/(1) Dated 23/3/96

Forwarded to the Hble Sessions Judge Jagdalpur.

C.J. Magistrate

मुख्य न्यायिक दण्डाधिकारी
जगदलपुर

Date of receipt of Appelliate Court.

XI-HC-78

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr..A...No...1760/96 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO &
HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 1760 of 1996

Appellant — **Maadvi Lakhma**

Vs

Respondent — **State of M.P.**

Present:
Shri R,K,Jain, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, learned P.L. for the State.

O R A L J U D G M E N T
(26/02/2007)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 07.03.96 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 295/93 whereby the learned 3rd Additional Sessions Judge after convicting the accused/appellant under Section 302 of the Indian Penal Code for committing the murder of his wife

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No.....1766/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

namely Maadvi Kosi, sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that on 24.09.92 at about 5.30 p.m. one Maadvi Aayte (P.W.-1) was setting fire in her house, at that time Maadvi Kosi (since deceased) came running to her house, her husband was chasing her carrying knife (*Chhuri)* in his hand. He attacked on her with the *Chhuri* – the weapon of offence, on her chest repeatedly, as a result of which she died on the spot. Accused/appellant ran away carrying the *chhuri* in his hand. P.W.-1 Maadvi Aayte informed P.W.-2 Podiyami Mahadeo about the incident, as it was already dark (night), therefore report could not be lodged. On the next day morning i.e. on 25.09.92 report Ex.P-1 was lodged in the Police Chowki Katekalyan, the same was sent to police station Kua Konda for registration of FIR, based on that Crime No.105/92 was registered. The investigation was taken up by Shri L. Tigga (P.W.-6) who left for the scene of occurrence after giving notice to the panchas, prepared inquest Ex.P-3 on the dead body of Maadvi Kosi. The body was sent for post mortem examination to the Primary Health Centre, Katekalyan where Dr. Manoj Verma conducted the postmortem, prepared postmortem report Ex.P-10. He opined that the cause of death was stab wounds in the chest and injuries to heart and major

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No...1768/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

vessels. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned 3rd Additional Sessions Judge received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused/appellant examined eight witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

5. We have heard Shri Jain, counsel for the accused/appellant and Shri U.N.S. Deo with Shri Akhil Mishra on behalf of the State.

6. Learned counsel for the accused/appellant has not disputed the homicidal death of Maadvi Kosi. Moreover as per the evidence of P.W.-1 Maadvi Aayte, sister of the deceased who

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....C.A.No.1768/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –५–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witnessed the crime in question has stated that the accused/appellant attacked the deceased with knife (*chhuri)* on her chest repeatedly. The evidence of P.W.-1 is corroborated by the medical evidence of P.W.-8 Dr.Manoj Verma who conducted the post mortem and has stated that there were stabbed wounds on the chest and cause of death was haemorrhage and the nature of death was homicidal. The injuries were sufficient in the ordinary course of nature.

7. As far as the involvement of accused/appellant in the crime in question is concerned, Mr. Jain vehemently argued that P.W.-1 Maadvi Aayte is the only eyewitness and she has stated that her eyesight is weak and by the time the crime was committed, the sun was already set, in the circumstances it was not possible for her to see the accused/appellant while assaulting the deceased.

8. On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial Court.

9. We have perused the evidence of P.W.-1 Maadvi Aayte, sister of deceased Maadvi Kosi, who has categorically stated that on the fateful day, she was at her residence. At that time deceased Maadvi Kosi was in her house sitting in the verandah

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No...1766/96 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when accused/appellant came with a knife (*chhuri)* and attacked Maadvi Kosi on her chest & stomach three-four times. Blood started oozing out of the injuries. She became frightened and ran away to the house of Podiyami Mahadeo and thereafter she disclosed the incident. Later Panchayat was convened and the matter was reported in the police station.

10. The evidence of P.W.-1 has been corroborated in material particulars by the evidence of P.W.-2 Podiyami Mahadeo who had stated that on the date of incident, at night, Maadvi Aayte came to his house. It was dinner time when complainant Maadvi Aayte (P.W.-1) came to her house and informed that Lakma has committed murder of his wife Maadvi Kosi thereafter she left to the house of Patel to inform about the incident. P.W.-3 Podiyami Baami & P.W.-4 Kawasi Dorga had also stated that on the next day morning Maadvi Aayte came and informed about the fact that Lakma has murdered her sister Maadvi Kosi. Therefore, the evidence of P.W.-1 Maadvi Aayte is corroborated by these witnesses as she immediately informed about the incident. As far as the arguments of Shri Jain, counsel for the accused/appellant that P.W.-1 who has stated that her eyesight was weak, is concerned, she has categorically stated that deceased Maadvi Kosi was sitting at a distance of 12 feet from her and she was able to recognize the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....Cr.A..96...1760/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant. She has stated that it is incorrect to say that on account of darkness and weak eyesight she was not able to identify the accused/appellant. She saw that the accused/appellant committed the murder of Maadvi Kosi. There is no reason before this witness to implicate the accused/appellant in such a serious crime for committing the murder of her sister by her brother in law.

11. Therefore, for the foregoing discussions, we are of the considered opinion that the prosecution has been able to establish the crime in question against the accused/appellant by legal and clinching evidence and as such, we do not find any illegality or infirmity in the impugned judgment of the trial Court convicting and sentencing the accused/appellant for commission of the offence under Section 302 of the IPC. The appeal is devoid of merit, the same is liable to be dismissed and is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge